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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/521,243	10/05/2005	Kenichiro Shinoi	L9289.04196	8667
52989	7590	08/20/2008	EXAMINER	
DICKINSON WRIGHT PLLC			NGUYEN, TUAN HOANG	
1901 L STREET NW				
SUITE 800			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20036			2618	
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			08/20/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/521,243	SHINOI, KENICHIRO	
	<b>Examiner</b>	<b>Art Unit</b>	
	TUAN H. NGUYEN	2618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 April 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 19-21 and 23 is/are pending in the application.
  - 4a) Of the above claim(s) 1-18 and 22 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 19-21 is/are rejected.
- 7) Claim(s) 23 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ .  | 6) <input type="checkbox"/> Other: _____ .                        |

## DETAILED ACTION

### ***Response to Arguments***

1. Applicant's arguments filed on 04/29/2008 with respect to claims 19-21 and 23 have been considered but are moot in view of the new ground(s) of rejection.
2. Claims 1-18 and 22 cancelled.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 19-20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nobukiyo et al. (US PUB. 2003/0073409 hereinafter, "Nobukiyo") in view of Hamabe (U.S PUB. 2002/0147015).

Consider claims 19 and 21, Nobukiyo teaches a base station apparatus that is controlled by a base station control apparatus and that performs data transmission to and reception from a mobile station apparatus by way of a high speed downlink packet access mode or a dedicated downlink physical channel mode said base station

apparatus comprising: a first data transmission section that performs data transmission, by way of said high speed downlink packet access mode (page 1 [0002] and [0005]); a second data transmission section that performs data transmission by way of said dedicated downlink physical channel mode (page 5 [0124]); a quality deficiency signal generation section that generates a quality deficiency signal when reception quality at the mobile station apparatus that performs data transmission by way of said high speed downlink packet access mode is lower than a predetermined threshold value (page 9 [0160]).

Nobukiyo does not explicitly show that a quality deficiency signal reporting section that reports the quality deficiency signal to the base station control apparatus; and a control section that controls the first data transmission section and the second data transmission section to perform data transmission by way of a transmission scheme determined by said base station control apparatus based on the quality deficiency signal.

In the same field of endeavor, Hamabe teaches a quality deficiency signal reporting section that reports the quality deficiency signal to the base station control apparatus (page 1 [0015-0016]); and a control section that controls the first data transmission section and the second data transmission section to perform data transmission by way of a transmission scheme determined by said base station control apparatus based on the quality deficiency signal (page 1 [0016] and page 8 [0089]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use, a quality deficiency signal reporting section that

reports the quality deficiency signal to the base station control apparatus; and a control section that controls the first data transmission section and the second data transmission section to perform data transmission by way of a transmission scheme determined by said base station control apparatus based on the quality deficiency signal, as taught by Hamabe, in order to provide the communication control method in the mobile communication system and the base station and a record medium used therefor, wherein, in the case where the PDSCH is transmitted by one specific base station and the DPCH is simultaneously transmitted by the plurality of base stations while controlling the transmitting power of the PDSCH according to the DPCH, an optimum value of a power ratio between the PDSCH and the DPCH is optimized according to the position of the mobile station, and thus it is possible to maintain the receiving quality of the PDSCH at a fixed level regardless of the position of the mobile station on the soft handover.

Consider claim 20, Nobukiyo teaches a base station apparatus that is controlled by a base station control apparatus and that performs data transmission to and reception from a mobile station apparatus by way of a high speed downlink packet access mode or a dedicated downlink physical channel mode said base station apparatus comprising: a first data transmission section that performs data transmission by way of said high speed downlink packet access mode (page 1 [0002] and [0005]); a second data transmission section that performs data transmission by way of said dedicated downlink physical channel mode (page 5 [0124]); a quality deficiency signal

generation section that generates a quality deficiency signal when reception quality at the mobile station apparatus that performs data transmission by way of said high speed downlink packet access mode is lower than a predetermined threshold value (page 9 [0160]).

Nobukiyo does not explicitly show that a quality deficiency signal reporting section that reports the quality deficiency signal to the base station control apparatus when the number of times said quality deficiency signal is generated per unit time is greater than or equal to a predetermined number of times; and a control section that controls the first data transmission section and the second data transmission section to perform data transmission by way of a transmission scheme determined by said base station control apparatus based on the quality deficiency signal.

In the same field of endeavor, Hamabe teaches a quality deficiency signal reporting section that reports the quality deficiency signal to the base station control apparatus when the number of times said quality deficiency signal is generated per unit time is greater than or equal to a predetermined number of times (page 1 [0015-0016] and page 9 [0091]); and a control section that controls the first data transmission section and the second data transmission section to perform data transmission by way of a transmission scheme determined by said base station control apparatus based on the quality deficiency signal (page 1 [0016] and page 8 [0089]).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use, a quality deficiency signal reporting section that reports the quality deficiency signal to the base station control apparatus when the

number of times said quality deficiency signal is generated per unit time is greater than or equal to a predetermined number of times; and a control section that controls the first data transmission section and the second data transmission section to perform data transmission by way of a transmission scheme determined by said base station control apparatus based on the quality deficiency signal, as taught by Hamabe, in order to provide the communication control method in the mobile communication system and the base station and a record medium used therefor, wherein, in the case where the PDSCH is transmitted by one specific base station and the DPCH is simultaneously transmitted by the plurality of base stations while controlling the transmitting power of the PDSCH according to the DPCH, an optimum value of a power ratio between the PDSCH and the DPCH is optimized according to the position of the mobile station, and thus it is possible to maintain the receiving quality of the PDSCH at a fixed level regardless of the position of the mobile station on the soft handover.

***Allowable Subject Matter***

5. Claim 23 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any response to this action should be mailed to:

Mail Stop \_\_\_\_\_ (Explanation, e.g., Amendment or After-final, etc.)  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Facsimile responses should be faxed to:

(571) 273-8300

Hand-delivered responses should be brought to:

Customer Service Window

Randolph Building  
401 Dulany Street  
Alexandria, VA 22313

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan H. Nguyen whose telephone number is (571) 272-8329. The examiner can normally be reached on 8:00Am - 5:00Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Maung Nay A. can be reached on (571) 272-7882. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information Consider the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Tuan Nguyen/  
Examiner  
Art Unit 2618

/Nay A. Maung/  
Supervisory Patent Examiner, Art  
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